

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF PENNSYLVANIA**

INDECK KEYSTONE ENERGY LLC,)
)
Plaintiff,)
)
v.) Civil Action No. 04-325 Erie
)
VICTORY ENERGY OPERATIONS) Judge Sean J. McLaughlin
LLC,)
)
Defendant)
)
) JURY TRIAL DEMANDED
)

VICTORY ENERGY'S MOTION FOR PARTIAL SUMMARY JUDGMENT

Defendant/Counter-Plaintiff, Victory Energy Operations LLC (“VEO”), through its respective undersigned counsel, requests summary judgment on Plaintiff’s Complaint and on Count I of VEO Second Amended Counterclaim, and in support thereof, submits VEO’s Memorandum of Law In Support of Its Motion for Partial Summary Judgment, and states as follows:

1. The License Agreement entered into on January 7, 2003 by VEO and Erie Power Technologies, Inc. (“EPTI”), clearly and unambiguously granted VEO the right to utilize EPTI’s technical information and marks to design, manufacture, market and sell natural circulation, industrial watertube package steam generators with a steam capacity range beginning at 29,000 pounds per hour of steam (“pph”), up to 150,000 pph (defined in the Agreement as the “Products”).

2. The undisputed evidence demonstrates that VEO has never utilized any of the technical information or marks supplied by EPTI or its successor in interest, Plaintiff Indeck

Keystone Energy LLC (“IKE”), for any purpose other than those authorized under the Agreement.

3. A complete defense to each and every claim IKE asserts is that VEO utilized IKE’s marks and trade secrets, if any, under the authority granted by the Agreement

WHEREFORE, Defendant/Counterplaintiff requests that this Court grant the motion and enter an order granting VEO summary judgment on IKE’s Complaint and on Count I of VEO’s Second Amended Counterclaim.

Dated: January 20, 2006

Respectfully submitted,

/s/ Christopher T. Sheean

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CERTIFICATE OF SERVICE

Christopher T. Sheean, an attorney, certifies that on the 20th day of January, 2006, he caused a copy of the foregoing ***Victory Energy's Motion for Partial Summary Judgment, Victory Energy's Memorandum Of Law In Support Of Its Motion for Partial Summary Judgment, Concise Statement Of Facts In Support of Victory Energy's Motion for Partial Summary Judgment, and Appendix to Victory Energy's Memorandum Of Law In Support Of Its Motion for Partial Summary Judgment*** to be filed electronically, and that the CM/ECF system for the court will e-mail a copy of the foregoing to the following counsel of record:

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/s/ Christopher T. Sheean
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